

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5745

PETITION OF MERTON V. SMITH, II

(Hearing held May 1, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, May 23, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioner proposes to construct a two-story addition that requires a three (3) foot variance as it is within four (4) feet of the side lot line. The required setback is seven (7) feet.

The subject property is Lot 8, Block 21A, located at 7106 Oakridge Avenue, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 00462468).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a two-story addition in the northern side yard.
2. The petitioner testified that the property is a narrow, cone-shaped lot. The property is located at the intersection of Curtis Road and Oakridge Avenue. See, Exhibit No. 4. The petitioner testified that the variance is required for only the northern tip of the proposed addition and that the addition would replace an existing deck.
3. The petitioner testified that the addition would adjoin a garage on the neighboring property, Lot 2-B, and that the addition would be screened by the existing vegetation as shown on Exhibit Nos. 11(a)-11(c). The petitioner testified that he would remove the existing vegetation that provides screening and install a line of evergreen trees.
4. The petitioner testified that he has shown the construction plans to his neighbors and that the neighbors support the variance request. A letter of support from the most impacted neighbors, Mr. Gravitz and Ms. Marks, was entered in the record as Exhibit No. 9.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is a shallow, cone-shaped lot. The Board finds that the lot's exceptional narrowness and unusual shape are conditions peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties for the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested is the minimum reasonably necessary and that the variance is required for only the northern corner of the proposed addition.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The proposed construction will replace an existing deck and will be screened by the existing vegetation. The petitioner will replace the vegetation with a line of evergreen trees.

The record contains no correspondence or testimony in opposition to the variance request. The record contains a letter of support from the most impacted neighbor, Lot 2-B, and the Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of three (3) feet from the required seven (7) foot side lot line setback for the construction of a two-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 6(a) through 6(h).
3. The petitioner shall install a line of evergreen trees at the northwest boundary between the petitioner's property and the adjoining property, Lot 2-D, that would have a minimum 5-foot installation height.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 23rd day of May, 2002

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.